

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



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DEPARTMENT OF INSURANCE
SPRINGFIELD

IN THE MATTER OF THE
REVOCATION OF THE LICENSING
AUTHORITY OF:

HEARING NO. 4074

EUGENE O. JOSEPH
7628 S. DREXEL AVE., # 1B
CHICAGO, IL 60619

ORDER

I, Deirdre K. Manna, Illinois Acting Director of Insurance, hereby certify that I have read the entire Record in this matter and the hereto attached Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer, Timothy M. Cena, appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a Hearing in the above-captioned matter. I have carefully considered and reviewed the entire Record of the Hearing and the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer attached hereto and made a part hereof.


I, Deirdre K. Manna, Acting Director of Insurance, being duly advised in the premises, do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer as my own, and based upon said Findings, Conclusions and Recommendations enter the following Order under the authority granted to me by Article XXIV of the Illinois Insurance Code (215 ILCS 5/401 et seq.) and Article X of the Illinois Administrative Procedure Act (5 ILCS 100/10-5 et seq.).

This Order is a Final Administrative Decision pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq.). Further, this Order is appealable pursuant to the Illinois Administrative Review Law (735 ILCS 5/3-101 et seq.).

NOW IT IS THEREFORE ORDERED THAT:

- 1) The Illinois Insurance Producer's License of the Respondent, Eugene O. Joseph, is revoked;
- 2) The Respondent, Eugene O. Joseph, shall within 35 days of the date of this Order, come into compliance with the restitution portion of the sentencing order imposed against him in Case # 00 CH 120 in the United States District Court, Northern District of Illinois, Eastern Division on December 5, 2001;
- 3) The Respondent, Eugene O. Joseph, shall pay as costs of this proceeding, the sum of \$289.25, directly to the Illinois Department of Insurance, Tax and Fiscal Services, 320 W. Washington, Springfield, Illinois 62767.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed the Official
Seal of the Department of Insurance in the City
of Springfield, State of Illinois, this 25 day.
of February, A.D., 2004.



Deirdre K. Manna
Acting Director

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



IN THE MATTER OF THE
REVOCATION OF THE LICENSING
AUTHORITY OF:

HEARING NO. 4074

EUGENE O. JOSEPH
7628 S. DREXEL AVE., # 1B
CHICAGO, IL 60619

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes Timothy M. Cena, Hearing Officer in the above captioned matter, and hereby offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

- 1) On May 7, 2003, the Illinois Director of Insurance, J. Anthony Clark, (Director) issued an Order of Revocation revoking the Illinois Insurance Producer's License of Eugene O. Joseph (Respondent) (Hearing Officer Exhibit # 2-2).
- 2) On June 2, 2003, the Illinois Department of Insurance (Department) received a Request for Hearing on the Revocation from the Respondent (Hearing Officer Exhibit # 2-1).
- 3) On June 23, 2003, the Director appointed Timothy M. Cena as Hearing Officer in this matter (Hearing Officer Exhibit # 1).
- 4) On June 23, 2003, the Director issued a Notice of Hearing, pursuant to the Respondent's Request for Hearing, setting a Hearing date and location of July 22, 2003 at the Department's Offices in Chicago, Illinois (Hearing Officer Exhibit # 2).

- 5) Louis Butler filed a Notice of Appearance in this matter as Counsel for the Department (Hearing Officer Exhibit # 2).
- 6) The Hearing in this matter was convened on July 22, 2003 at the Department's Offices in Chicago, Illinois at which time were present, Timothy M. Cena, Hearing Officer; Louis Butler, on behalf of the Department; Richard Nitka, an employee of the Department; Eugene O. Joseph, Respondent (Pro-Se); and Celeste and Preston Joseph, wife and son of the Respondent. The purpose of this proceeding was to allow the parties to appear and present evidence relevant to the allegations of violations of the Illinois Insurance Code contained in the Department's Order of Revocation in this matter and to determine whether said Order should stand.
- 7) At the start of the Hearing the Respondent made an Oral Motion for Continuance of the Hearing. The Respondent asked to have the time in order to retain an attorney. The Department objected to the Motion on the basis that the Motion was untimely. The Respondent was notified that he could retain counsel of his own choosing in the June 23, 2003 Notice of Hearing and therefore had ample time to do so. The Hearing Officer denied the Respondent's Motion and required the parties to proceed with the Hearing.
- 8) Prior to the start of the presentation of evidence in this matter, the Department made a Motion to Amend the Notice of Hearing to indicate that the Notice of Hearing contained the incorrect statutory cite for the Respondent's revocation. The Notice of Hearing cites as the Department's basis for the revocation Section 500-70(a)(2) and (a)(8) of the Insurance Code, rather than, Section 500-70(a)(6) of the Code. The Department indicated that its Order of Revocation sent to the Respondent on May 7, 2003, some 2½ months prior to the Hearing, contained the correct cite. The Hearing Officer granted the Department's Motion finding that no prejudice attached to the Respondent by doing so in that the correct statutory cite was contained in the Order of Revocation and was therefore the basis of the Respondent's Request for Hearing in this matter.
- 9) In its case in chief in this matter, the Department offered two certified documents from the United States District Court, Northern District of Illinois, Eastern Division in criminal case # 00CR 0120, captioned, United States of America v. Eugene Joseph. Department Exhibit # 1 is a Grand Jury indictment indicating that from January 1996 through June 1996, the Respondent knowingly executed a scheme to defraud six separate banks in the Chicago area in which he attempted to gain control of monies owned by the banks, in a total amount of \$40,000.00, by materially false and fraudulent pretenses, representations and promises. Specifically, the Respondent opened bank accounts at said banks using false names and presenting false identification. The Respondent would then obtain stolen credit card access checks issued by banking institutions issued in names other than the Respondent and deposit said checks into the bank accounts that he had fraudulently opened. The Respondent then used checks and automatic teller

machines to withdraw funds from the fraudulent accounts. Department Exhibit # 2 is a certified copy of the Judgment in a Criminal Case, Case # 00 CR 120, entered on December 5, 2001, in which the Respondent was found guilty, after a plea of not guilty, to one count of Bank Fraud. The Respondent was sentenced to 10 months of imprisonment for the conviction and after serving his sentence was placed on supervised release for a period of three years. The Respondent was also assessed \$100.00 in court costs and ordered to pay restitution in the amount of \$24,900.00 to two financial institutions.

- 10) The Respondent, Eugene O. Joseph, testified in a narrative form, on his own behalf in this matter, as follows:
 - a) He does not understand why the Department would pursue this case against him since it occurred before he was licensed and happened in 1996. He does not believe that it is proper for the Department to revoke his license for something that happened in 1996;
 - b) He doesn't believe that his conviction reflects on his character. He has not had a problem since receiving his insurance license in 1999;
 - c) He knows that his conviction was in District Court, but "we know definitely it's not a conviction";
 - d) Prior to being an insurance agent he drove a cab;
 - e) He believes that he is the subject of a conspiracy to make sure that he is not able to survive financially;
 - f) His wife is employed as a secretary for A.G. Edwards.
- 11) On Cross-examination the Respondent testified as follows:
 - a) He denies "most" of the allegations made against him in the Grand Jury Indictment;
 - b) He believes that he was actually charged three different times and appeared before three judges in three courts. He stated that it is hard to defend yourself against that process.
- 12) Esquire Deposition Services transcribed the testimony taken in this matter and charged the Department \$289.25 for the court reporter's attendance and one copy of the proceedings.

CONCLUSIONS OF LAW

Based upon the above-stated Findings of Fact and the entire Record in this matter the Hearing Officer offers the following Conclusions of Law to the Director of Insurance.

- 1) Timothy M. Cena was duly appointed as Hearing Officer in this matter by order of the Director of Insurance, pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).
- 2) The Director of Insurance has jurisdiction over the subject matter and the parties to this proceeding pursuant to Sections 401, 402, 403 and 500-70 of the Illinois Insurance Code (215 ILCS 5/401, 5/402, 5/403 and 5/500-70).
- 3) The purpose of this proceeding is to determine whether the Order of Revocation previously issued in this matter by the Director of Insurance, revoking the Respondent's Illinois Insurance Producer's License, should stand. In its Order of Revocation in this matter the Department alleged that the Respondent had been convicted of a felony and such conviction is grounds for revocation of his producer's license.

Section 500-70(a)(6) of the Illinois Insurance Code (215 ILCS 5/500-70 (a)(6)) provides as follows:

- a) The Director may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with this Section or take any combination of actions, for any one or more of the following causes: ...
- 6) having been convicted of a felony; ...

The evidence presented by the Department in this matter indicates that the Respondent was found guilty of one count of Bank Fraud on December 5, 2001 and was sentenced to 10 months of imprisonment, placed on three years of supervision after his release and ordered to pay \$24,900.00 in restitution to two financial institutions.

The Respondent testified on his own behalf in this matter in a narrative form and also responded to questions asked of him by the Department's counsel and the Hearing Officer. While the Respondent spoke in broken English, the Hearing Officer believes that the Respondent understood both the charges for which he was found guilty in federal criminal court, as well as the nature of this proceeding before the Department.

50 Ill. Adm. Code 2403, Producer Felony Review, lists the standards that the Director shall consider when determining a licensing penalty for a producer who has been convicted of a felony. The standards are: the nature and severity of the criminal activity; the time elapsed since the criminal conduct; the absence of additional criminal conduct;

whether the conviction was for multiple offenses or a pattern of criminal conduct; whether the Respondent has paid restitution and successfully completed his or her sentence or probationary period; proper disclosure of the criminal activity, and rehabilitation from the felony conviction.

The issues of producer felony review and the rehabilitation from a felony conviction in the context of the revocation of an insurance producer's license has been addressed by the courts in Illinois. In Medly v. Department of Insurance, 223 Ill. App. 3d 813, the court stated that "the type of rehabilitation required here is such that the licensee can be trusted to engage in selling and securing of insurance policies which may be intricate and may involve insureds or prospective insureds who lack sophistication in such matter." The Court further stated that a person seeking to show rehabilitation should appear contrite in nature and should indicate ways in which he intended to change.

In reviewing the above-listed standards the Hearing Officer concludes that the Director properly and correctly revoked the Respondent's producer's license. The Respondent's felony conviction was of a serious nature and involved fraud and the theft of money. It involved a deliberate scheme by the Respondent to open fictitious bank accounts and deposit stolen checks into those accounts. There is no evidence that the Respondent has paid his court ordered restitution and he has yet to complete his court ordered supervised release. As problematic as is the nature of the Respondent's conviction, perhaps even more troubling, is the attitude that the Respondent exhibited at the Hearing. The Respondent did not appear contrite at the Hearing, he did not accept responsibility for his actions nor did he indicate any manner in which he has changed or intended to change since his conviction. Indeed, the Respondent was combative and unrepentant, accusing the Department and the federal government of a conspiracy to ruin him financially.

RECOMMENDATIONS

Based upon the above-stated Findings of Fact, Conclusions of Law and the entire Record in this matter the Hearing Officer offers the following Recommendations to the Director of Insurance:

- 1) That the Respondent's Illinois Insurance Producer's License be revoked;
- 2) That the Director order the Respondent to comply with the restitution provisions of the federal court order in Case # 00 CR 120, and

- 3) That the Respondent be assessed the costs of this proceeding.

Respectfully submitted,

Date: 2/16/04

Enter: Timothy M. Cena
Timothy M. Cena
Hearing Officer

STATE OF ILLINOIS

DEPARTMENT OF INSURANCE



IN THE MATTER OF THE
REVOCATION OF LICENSING
AUTHORITY OF:

Eugene O. Joseph
7628 South Drexel Ave., #1B
Chicago, IL 60619

ORDER OF REVOCATION

I, J. Anthony Clark, Director of Insurance of the State of Illinois do hereby revoke the license of Eugene O. Joseph to take effect 30 days from the date of mailing this Order pursuant to Section 500-70 of the Illinois Insurance Code (215 ILCS 5/500-70).

Based upon an investigation and review of the Licensee by the Producer Section of the Illinois Department of Insurance, the Department alleges that:

On December 5, 2001, Case No. 00 CR 120-1 was entered in the United States District Court, Northern District of Illinois. The Licensee was found guilty to the offense of Bank Fraud committed in June 1996.

A Notice of Appeal was filed December 13, 2001 to the United States Court of Appeals for the Seventh Circuit.

On November 12, 2002, Case No. 01-4232 was decided in the United States Court of Appeals for the Seventh Circuit. The conviction of Bank Fraud by the Licensee was affirmed to the United States District Court, Northern District of Illinois for Case No. 00 CR 120-1.

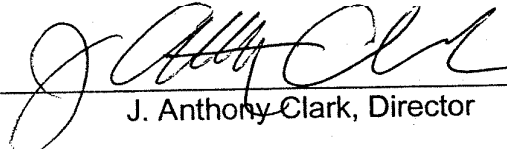
Therefore, the Licensee has been convicted of a felony, which is a ground for revocation pursuant to Section 500-70(a)(6) of the Illinois Insurance Code (215 ILCS 5/500-70(a)(6)).

Exhibit 2

This Order of Revocation shall take effect 30 days from the date of mailing but shall be stayed if within the 30-day period a written request for hearing is filed with the Director. Any correspondence concerning this Order of Revocation shall be addressed to the Department of Insurance, Producer Section, 320 West Washington Street, Springfield, Illinois 62767-0001.

50 Ill. Adm. Code 2402 governs hearings before the Department of Insurance. Section 408(5)(a) of the Illinois Insurance Code (215 ILCS 5/408) and 50 Ill. Adm. Code 2402.270(d) provide that the costs of a hearing may be assessed against the parties.

IN WITNESS WHEREOF, I have hereunto
subscribed my name and affixed the Official
Seal of the Department of Insurance in the
City of Springfield, State of Illinois, this
7th day of May, A.D., 2003.


J. Anthony Clark, Director

JAC:lc